

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
Charleston Division**

Nelson L. Bruce,)	
)	
	Plaintiff,)
)	Civil Act. No. 2:19-cv-03456-BHH-KDW
v.)	
)	
Bank of America, N.A.,)	
)	
	Defendant.)
)	

**DEFENDANT’S REPLY TO PLAINTIFF’S
OBJECTION TO MAGISTRATE’S REPORT AND RECOMMENDATION**

This case concerns the pro se plaintiff’s Nelson Bruce’s (“Mr. Bruce”) attempt to allege an violation of the Fair Credit Reporting Act (“FCRA”) and an alleged violation of the South Carolina Consumer Protection Code (“SCCPC”) against Bank of America, N.A. (“BANA”). At this time, the court must decide whether to adopt a Federal Magistrate’s Report and Recommendation that recommends denying Mr. Bruce’s attempt to amend his complaint for the above captioned action.

In her report and recommendation to deny the Mr. Bruce’s motion to amend his complaint to assert alternative facts for his FCRA claim and include a related claim alleging a violation of the SCCPC, the Magistrate properly applied federal and state law to conclude that the proposed amendments were futile. Nothing stated in Mr. Bruce’s objection to the Magistrate’s report and recommendation highlights any clear errors in the Magistrate’s application of federal and state law to reach these legal conclusions. Furthermore, Mr. Bruce concedes that the Magistrate’s Report and Recommendation is proper by expressly conceding that he “no longer wishes to pursue the motion to amend in this case” so that he can file a new, separate action¹ to assert the new claims

¹ To avoid the Magistrate’s and this Court’s final ruling denying his motion to amend complaint, Mr. Bruce has restated the claims in his amended complaint in new complaint filed with the Court in case no. 2:2020-cv-03778.

that he is trying to allege through his amended complaint. Accordingly, the Court should adopt the Magistrate's report and recommendation and issue a final order that denies Mr. Bruce's motion to amend complaint.

STANDARD OF REVIEW

When reviewing a magistrate's recommendation, district courts generally need only review the recommendation for clear error. *Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983) (holding that in the absence of specific objections to the Report, the court is not required to give any explanation for adopting the recommendation). The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976).

When either party files a valid objection, a district judge "shall make a *de novo* determination of those portions of the ... recommendations to which [an] objection is made." 28 U.S.C. § 636(b)(1). In order for objections to be considered by a United States District Judge, the objections must be timely and must specifically identify the portions of the Report and Recommendation to which the party objects and the basis for the objections. Fed. R. Civ. P. 72(b); *see United States v. Schronce*, 727 F.2d 91, 94 n. 4 (4th Cir.1984); *Wright v. Collins*, 766 F.2d 841, 845–47 nn. 1–3 (4th Cir.1985).

"Courts have held *de novo* review to be unnecessary in ... situations when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendation." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir.1982). In the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d at 200. After completing the review, the Court may accept, reject, or modify, in whole or in part, the

Magistrate's recommended disposition. *See* Fed. R. Civ. P. 72(b)(3); *accord* 28 U.S.C. § 636(b)(1)(C).

ARGUMENT

Because Mr. Bruce admits that he no longer wishes to litigate the merits of his motion to amend complaint, the court should adopt the Magistrate's Report as a final court order of the court.

Although Mr. Bruce contends that the factual findings and conclusions of law in the Magistrate's Report are incorrect, Mr. Bruce merely reiterates the fatally flawed arguments that he raised in his prior briefing in support of his motion to amend pleadings. Moreover, none of the arguments that Mr. Bruce raises in his objection to the Report have any merit because he abandons those arguments by admitting and conceding that the Court should deny his motion to amend.

CONCLUSION

For the reasons stated herein and in the Magistrate's Report, BANA prays that the Court adopts the Report, and enters an order denying Mr. Bruce's Motion to Amend for the reasons stated in the Report.

Respectfully submitted on this 12th day of November, 2020.

/s/ Brian A. Calub
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CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2020, the foregoing *Respondent Bank of America, N.A.'s Reply to Objection to Magistrate's Report and Recommendation* was filed via the court's CM/ECF system and served upon the following parties by first class U.S. Mail with postage prepaid:

Nelson L. Bruce
144 Pavilion Street
Summerville, SC 29483

Pro Se Petitioner

/s/ Brian A. Calub
Brian A. Calub (Fed No. 9836)